

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5611

PETITION OF SUSAN AND TERENCE HEALY
(Hearing held July 25, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, September 20, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The petitioners propose to construct two bay windows that require variances of: (a) 2.40 feet as it is within 22.60 feet of the front lot line and (b) 3.50 feet as it is within 22.20 feet of the front lot line. The petitioners also propose to construction a covered porch that requires a variance of 3.50 feet as it is within 18.50 feet of the front lot line. The required front lot line setback for the bay windows is twenty-five (25) feet and the required front lot line setback for the covered porch is twenty-two (22) feet.

The subject property is Lot 21, Block 13, located at 6501 Allegheny Avenue, Takoma Park, Maryland, in the R-60 Zone (Tax Account No. 03177907).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a covered porch in the western front yard, a bay window in the western front yard, and a bay window in the southern side yard.
2. The petitioners testified that the property is a corner lot located at the intersection of Allegheny Avenue and Highland Street. The residence fronts on Allegheny Avenue. The petitioners testified that the property is located at the peak of an extremely steep hill and that the slope of the hill drops 20 feet from south to north. See, Exhibit Nos. 11(b) and 11(d).
3. The petitioners testified that the property is a very shallow lot and that their lot is much smaller than any of the neighboring lots. 6503 Allegheny Avenue is a smaller lot that adjoins the petitioners' northern side yard, but no house is located on the lot.
4. The petitioners testified that the any new construction on their property would require a variance and that the additions were designed to have the least visual impact on the neighboring properties.
5. The petitioners testified that the proposed construction would be similar to other improvements in the neighborhood and that their neighbors support their variance request. See, Exhibit Nos. 13(a) and 13(b).

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is a steeply sloped shallow lot. The Board finds that the existing topographical conditions are unique and peculiar to the property and would result in practical difficulties for and a undue hardship upon the property owners if the variances were not granted.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of two bay windows and a covered porch are de minimus.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the design of the proposed construction would diminish the visual impact on the neighboring homes and would not be detrimental to the use and enjoyment of the neighboring and adjoining properties. The record contains no testimony or correspondence in opposition to the variance request. The record does contain a petition of support from the petitioners' neighbors.

Accordingly, the requested variances of: (a) 2.40 feet from the required twenty-five (25) foot front lot line setback for the construction of a bay window in the western front yard; (b) 2.80 feet from the required twenty-five (25) foot front lot line setback for the construction of a bay window in the southern side yard; and (c) 3.50 feet from the required twenty-two (22) foot front lot line setback for the construction of a covered porch are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 9(a) through 9(d) and 10(a) through 10(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Mindy Pittell Hurwitz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 20th day of September, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.